



July 11, 2001

Mr. Sim W. Goodall
Police Legal Advisor
City of Arlington
620 West Division Street
Arlington, Texas 76010

OR2001-2995

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151075.

The Arlington Police Department (the "department") received several written requests for records pertaining to the shooting of a city police officer during an on-duty training session. Specifically, the requestors seek copies of the related 911 calls, dispatch tapes, videotape recordings, witness statements, written reports, written policies for training exercises, and Officer Blaine Shaw's personnel file. You have released the requested policies and some of the information from the personnel file. You contend the remaining requested information is excepted from required public disclosure pursuant to section 552.101, 552.108, 552.117, 552.119, and 552.130 of the Government Code.

Section 552.108(a)(1) excepts from public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." You state that the investigation of the shooting incident "is still open and under investigation" and that "[a] case is being prepared for the Tarrant County District Attorney's Office to present to a grand jury." Based on these representations, we conclude that you have established the applicability of section 552.108(a)(1) to the information at issue. The department therefore may withhold the information pertaining to the shooting incident pursuant to section 552.108(a)(1) of the Government Code.¹

¹Because we resolve this aspect of your request under section 552.108, we need not address the applicability of the other exceptions you raised.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other applicable exception to disclosure, the department must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).

We next address the extent to which the information contained in Officer Shaw's personnel file is excepted from public disclosure. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Some of the information at issue is deemed confidential pursuant to statutory law. Among the records at issue are the officer's W-4 forms. These forms constitute confidential "tax return information" and as such must be withheld in their entirety pursuant to federal law. See 26 U.S.C. § 6103.

You also submitted to this office an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5). Release of this document under the Public Information Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You also contend that section 552.101 protects the officer's privacy interests. We believe, however, that the more applicable exception in this instance is section 552.102(a) of the Government Code. Section 552.102(a) protects, in pertinent part, "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. See Open Records Decision No. 336 (1982); see also Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

Information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction for that plan is not information that is excepted from disclosure.

Open Records Decision No. 600 at 9 (1992). On the other hand, this office has determined that information revealing the personal financial decision to have certain deductions made from an employee's paycheck meets the *Industrial Foundation* test. Open Records Decision No. 545 (1990). We agree that the department must withhold the financial information in Exhibit E pursuant to common law privacy.

The records at issue also contain information that the department must withhold pursuant to section 552.117(2) of the Government Code. Under section 552.117(2), the department must withhold "information that relates to the home address, home telephone number, or social security number, or that reveals whether" the police officer "has family members." We agree the department must withhold the information it has marked as protected under section 552.117(2). We have marked additional information that the department must withhold under section 552.117(2).

Finally, we note that some of the records at issue contain information that must be withheld pursuant to section 552.130(a)(1) of the Government Code, which requires the withholding of "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, we agree that the department must withhold the driver's license information it has marked pursuant to section 552.130.

In summary, the department may withhold all records pertaining to the shooting incident pursuant to section 552.108(a)(1) of the Government Code except for basic information, which must be released. The department must withhold pursuant to section 552.101 of the Government Code the following information: the officer's W-4 form and I-9 form. The department must also withhold pursuant to section 552.102(a) the financial information in Exhibit E under the common law right of privacy. The department must withhold the officer's home address, home telephone number, social security number, and family information pursuant to section 552.117(2), and the employee's driver's license information pursuant to section 552.130(a)(1). Any remaining information in the personnel file must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

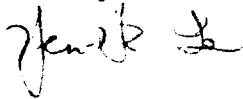
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/seg

Ref: ID# 151075

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